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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/153,621	09/15/98	SMITH R	P-US-TN1444

MMC2/0314

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EXAMINER	
DINH, T	

ART UNIT	PAPER NUMBER
2841	

DATE MAILED: 03/14/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary	Application No.	Applicant(s)	
	09/153,621	SMITH, ROGER Q.	
	Examiner	Art Unit	
	Tuan T Dinh	2841	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *20 November 2000* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6 and 15-20* is/are pending in the application.

4a) Of the above claim(s) *15-20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☒ Notice of References Cited (PTO-892)
16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *10* .
18) ☒ Interview Summary (PTO-413) Paper No(s). *11* .
19) ☐ Notice of Informal Patent Application (PTO-152)
20) ☐ Other: .

DETAILED ACTION

The office action send on October 24, 200 is withdrawn

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-6, drawn to an audio equipment, classified in class 361, subclass 814.

II. Claims 15-20, drawn to an electronic equipment, classified in class 361, subclass 801.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions the receptacle assembly for receiving a battery which is different the protection bar of the audio housing.

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

During a telephone conversation with Mr. Ayala on Jan 9, 2001 a provisional election was made without traverse to prosecute the invention of group I, claims 1-6. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15-20 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

.Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-6 are provisionally rejected under the judicially created doctrine of double patenting over **claims 21-27** of copending Application No. **09/262,751**. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: **a first protection shield (or bar) flexibly connected to the housing.**

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, line 4 is unclear. Is a first protection bar **flexibly** connected to the housing or a first protection bar flexible connecting to the housing?

Regarding claim 3, line 2 is unclear. Is a connector assembly **flexibly** connected to a first protection bar or a connector assembly flexible connecting to the housing.?

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1,2 ~~1-6~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over W. O. Brown (U. S. Patent 2,058,407).

As best understood to claims 1 and 6, Brown discloses a radio cabinet as consider as audio equipment as shown in figures 1-4 comprising a housing (form by element 1 and 2, see figure 1) having an audio circuitry (3, 6, see figure 1). The

equipment includes a first and a second movable protection bars (14, 15, column 2, lines 25-26, see figures 1 and 2) connecting to the housing. Brown does not teach the first and second protection bars that are flexible. However, the relative term is flexibility in particular since virtually anything will flex if enough pressure is applied to it. – Fredman v. Harris-Hub Co., Inc. (DC NIII) 163 USPQ 397 (column 2, lines 57-61, column 3, lines 1-11, column 4, lines 52-62).

As to claim 2, Brown discloses an audio equipment as shown in figures 1-3 further comprising a handle (21, column 2, lines 53-54) that is attached (19, see figure 1) to the protective bars.

As best understood to claim 3, Brown discloses an audio equipment as shown in figures 1-4 further comprising a connector assembly (16) connecting the protective bar to the housing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Collins et al (U. S. Patent 3,698,780).

Brown discloses the claimed invention, except for the connector assembly having a flexible gasket, and the gasket is disposed between the bar and the housing. Collins teach a radio cabinet (C) having a connector assembly (25). The assembly has a flexible gasket (30) which is disposed between protection bar (12) and housing (C).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the equipment of Brown and provide the flexible gasket as taught by Collins in order to protect the housing when the connector assembly fasteners into the housing.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jones and Schultz et al disclose related art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan T Dinh whose telephone number is 703-306-5856. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on 703-308-3301. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-3431 for regular communications and 703-308-3431 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

TD
March 11, 2001

Jayprakash N. Gandhi
Primary Examiner
Technology Center 2800